Friday, July 13.

FIRST DIVISION.

[Lord Fraser, Ordinary.

STEEL *v.* STEEL.

Domicile—Domicile of Origin—Husband and Wife—Divorce—Jurisdiction.

In an action of divorce on the ground of desertion at the instance of a husband against his wife, the defender pleaded no jurisdiction, on the ground that her husband was a domiciled Englishman. It was proved that the pursuer was born in Scotland in 1832, where he received his education. He subsequently entered a mercantile house in Glasgow in 1845. In 1851 he went to Batavia, where he remained for five years, and then returned to Glasgow. In 1857 he went to Burmah as manager of a business in Rangoon. He visited Glasgow in 1864, when he stayed with his brother, and in 1868-69, when he stayed in his father's house. In 1870 he established a separate business of his own in Rangoon. In 1871 he again visited Scotland, and made his father's house in Glasgow his headquarters. He returned to Rangoon in 1872. In 1873 a branch of his business was established in London, and in 1874 he took up his abode with his brother in London, with whom he lived till 1880. He then took a lease of a house in London, and in 1881 was married. Shortly after the marriage the spouses made a journey to India and Burmah, and on their return lived in London and Brighton until 1884, when the defender left her husband. In 1887 the pursuer took a lease of an estate in Scotland, and transferred his establishment there. The pursuer deponed that it had all along been his intention to return to Scotland, which he regarded as his domicile, when the exigencies of his business permitted him to do so. *Held* that the pursuer had not lost his domicile of origin, and plea of no jurisdiction *repelled.*

William Strang Steel, East India merchant, residing at Braco Castle, Perthshire, raised an action, on 17th March 1888, against his wife Mrs Rosetta Edith Barber or Steel, for divorce on the ground of desertion.

The pursuer and defender were married in London on 25th October 1881, and continued to reside together in London and elsewhere until 21st February 1884, when Mrs Steel left her husband's home in Brighton, and did not thereafter reside with him.

Mrs Steel lodged defences, in which she averred that her husband was a domiciled Englishman, and pleaded "no jurisdiction."

The pursuer in answer averred that he was born in Scotland, and had retained his Scottish domicile.

Evidence was led in regard to the question of jurisdiction.

Mrs Steel (33) deponed — "I am the defender in this action. I was born in Demerara in the West Indies. My father and mother were Irish. . . . I was married to Mr Steel on 26th October 1881. I had made his acquaintance only a few months before. I first met him at the house of a friend in London. He had taken a lease of a house at 88 Lancaster Gate, and previous to that he had been living at 65 Lancaster Gate. He was very reserved indeed as to what he had been doing in life, and I knew very little of his early history. I understood he was a merchant, that he had his business in London, and that London was his home. . . . During my married life all Mr Steel's relations, so far as I was brought into contact with them, were living in London and the neighbourhood of London. He had no near relations that he told me about in Scotland at all. His mother was living, and still lives with her son James in Cleveland Square, London. On one occasion Mr Steel and I went to Scotland for a few weeks to pay visits. (Q) Were they relations that you went to, or only friends?—(A) Only friends. During the time we were in Scotland he never said anything to me about considering himself a Scotchman, or that he was going to live in Scotland. (Q) Mr Steel says in the present case 'that it has always been his desire and intention to return to his native country, and to settle there permanently, and for a number of years he has been on the outlook for a suitable estate there, intending to purchase it and to make it his permanent abode.' Is that the first you ever heard of that?—(A) Yes, I never heard that that was his intention, because he had always been talking about England. I certainly do not believe that during our married life he had the slightest intention of going to Scotland to establish himself permanently there. He never spoke or behaved in any way as if he considered himself a native of Scotland at that time . . . *Cross.*—I did not know my husband was a Scotchman. I knew he was born in Scotland. I was not sure until lately that he had been educated in Scotland. I never gave that matter consideration. I understood he had been brought up to business in London and abroad. I understood he had been with a Mr Martin in Batavia. I did not know he had been in an office in Glasgow in early life. I thought he had gone direct from London to Batavia. I concluded his father and mother were Scotch. I knew he had Scotch friends. He did not tell me during our engagement that he was of Scotch family, and had been brought up in Scotland."

Mr Steel deponed as follows—"I was born in Glasgow in 1832. My father was John Steel, manufacturer in Glasgow, a Scotchman by birth, and his father was also a manufacturer in Glasgow. My father resided in Glasgow all his life. He died very suddenly in 1872 when at Chislehurst on a week's visit to my brother there. My mother was Grace Niven Strang, daughter of Mr Strang of Westhouse, Crosshill, East Kilbride. Her family had owned that estate for generations. I was educated at various schools in Glasgow, and latterly at the High School. In December 1845 I entered the office of Martin, Turner, & Company, merchants in Glasgow, where I remained till 1851. In September 1851 they transferred me to their house of Martin, Dyce, & Company in Batavia. I remained in the service of Martin, Dyce, & Company for about five years, and then I returned to Glasgow, where I set up business for myself. I continued in business in Glasgow for about a year. At that time Mr Muir, of James Finlay &

Company, proposed that I should go out to Burmah to manage the business there of Gladstone, Wyllie, & Company, who were the correspondents of James Finlay & Company of Glasgow. All the partners were Scotch, and a very large part of their business came from Glasgow. I went out to Burmah in 1857. In 1859 I became a partner of Gladstone, Wyllie, & Company. I remained at Rangoon till 1864. I then returned to Scotland, and remained in Glasgow for the greater part of a year, living with my brother Mr James Alison Steel. I went out to Rangoon again in 1865, returned to Glasgow in 1868, and remained till 1869, residing during that time in my father's house in Glasgow, but of course travelling about a good deal. Towards the end of 1869 I went out again to Rangoon. At 31st October 1870 I retired from Gladstone, Wyllie, & Company, and established my own firm of William Strang Steel & Company. James Finlay & Company were at the beginning, and for some years, the only representatives we had in this country, and it was in conjunction with them that our business in Rangoon was opened. That arrangement continued till the middle of 1873, when I found it necessary to make an alteration upon it. Our rice business had largely developed, and we had erected large rice mills; and while James Finlay & Company were excellent people for the soft goods department of our business, we required to have an establishment in London to get orders for rice, charter ships, and do matters which James Finlay & Company could not do so well as I could do myself. London is the centre of the rice market. I established a branch of my business in London. My brother James Alison Steel then became a partner. The London firm is Steel Brothers & Company. That firm and the corresponding firm of William Strang Steel & Company of Burmah still exist. I still have a house in Rangoon, but it is not now furnished. I remained in Burmah from the date of the establishment of my firm there until June 1871, when I returned to Scotland. I made my father's house in Glasgow, as formerly, my headquarters. I also paid a visit to my brother, who by that time had returned from the Cape and was living at Chislehurst. I returned to Rangoon early in 1872. I came back to Europe in the end of that year. By that time my father had died, and my mother was then living with my brother in London. She still had her old house in Glasgow, but she was on a visit to my brother at 65 Lancaster Gate, where he rented a furnished house on a yearly tenancy. I lived with him, but moving about the country, until the end of 1873 or beginning of 1874, when I went out again to Burmah. I returned to England late in 1874, and on my return I again made my headquarters at my brother's house at Lancaster Gate. I continued to reside with him off and on till Christmas 1880—he still living in that furnished house. About Christmas 1880 I took a house of my own. The furniture in No. 65 Lancaster Gate was very shabby, and the landlord would do nothing for the house. I had been prosperous, and thought I might have a better house. I accordingly took a lease of a house, No. 88 Lancaster Gate, and furnished it. My mother and brother just came over and lived with me. I was living there when I was married to defender on 25th October 1881. I had not been engaged to her when I took the house at 88 Lancaster Gate. She was a Miss Barber, and lived with her aunt. . . . (Q) Did you tell her you were a Scotchman and had been brought up in Scotland?—(A) Of course. . . . My wife left me while we were at Brighton. After a month or two, when I saw that she was not going to come back, I returned to Lancaster Gate. If she had come back to me I would have remained in Brighton. I re-opened my house at Lancaster Gate, and continued to reside there till Whitsunday 1887, when I removed to Braco Castle in Perthshire. I had arranged a lease of Braco Castle in February, and I moved my establishment there partly in May and partly in July. My whole establishment was removed by July. There was a break in my lease of the house at Lancaster Gate at Christmas 1887, of which I took advantage. Since then I have resided at Braco Castle. Apart from my house at Rangoon I have no other residence. I have Braco Castle upon a five years' lease, with a break in the tenant's favour on three months' notice at the end of each year. I am still in business, and my connection with my business involves occasional visits to London. The business does not now require the same personal attention from me which it did at one time. . . . . I have at present no intention of leaving Braco. I am settled in Scotland with the firm intention of never leaving it. I think I am not at all likely to leave Braco except for a place of my own in Scotland. I am still looking after an estate to purchase. I have no thought or intention whatever of returning to live in London. There is nothing in connection with my family or business arrangements which renders that necessary so far as I know. The acquisition of an estate in Scotland has been for a very long time the object of my desire, and both before and after my marriage I had considered the particulars of various estates in Scotland which were brought under my notice. As far back as 1864 I had endeavoured to re-purchase my mother's family estate, and more than once since then I have renewed the attempt, but the present proprietor will not part with it." In regard to the estate of Findynate, which was brought under the pursuer's notice with a view to purchase, Mr Steel deponed—"I pointed out where the place was, and showed her (Mrs Steel) the stations we would be near. I asked her for an opinion, and she said she would give no opinion; she took no interest in me or my estates, or anything else belonging to me. The matter then dropped. I never considered that I had ceased to be a Scotchman. I was rather proud of being a Scotchman. Nearly all the visitors to my house were Scotch. Scotchmen were continually in and about my house, and Scotland was continually being talked of. I had no intention of settling permanently in England—not longer than my business required me to reside there. I had all along the prospect of getting my business into such a position that I would not require to supervise it. I had always the intention of ultimately settling in Scotland as soon as business arrangements permitted. That was my intention both before and after my marriage. Naturally it would only be to my very intimate friends that I would mention that, but

it was spoken of in the family circle and amongst my intimate friends. After my wife left me the matter of settlement in Scotland came up more prominently. I made up my mind to move to Scotland as soon as a suitable place offered. . . . . I have now no residence in London or in England. My only connection with England is that I am a partner in the London house, which is in connection with my Rangoon house." In regard to the present action Mr Steel deponed—"I had always intended to come and reside in Scotland, and the prospect of these proceedings may have accelerated the carrying out of that intention."

Mr James Alison Steel, a brother of the pursuer, gave corroborative evidence as follows:—"(Q) Did your brother while he lived in London often talk to you about his reasons for living there?—(A) Well, he lived there because his business was there. Apart from his business he never indicated any preference for London or any desire to settle there; I should say he would not have preferred London except for business reasons. (Q) Did he always talk of himself as a Scotsman?—(A) There was no necessity for him to talk of himself as a Scotsman to me. He never did anything to indicate that he had severed his connection with Scotland or taken up his permanent residence in England. We have had conversations in regard to what our future movements might be when the calls of business became less exacting. I think these conversations were all through our lives—both before and after his marriage. His views as expressed to me were similar to what I expressed to him—that we should both desire to retire from business; to retire to Scotland. I should think that is a thing which has been in our minds all the time we have been in England."

Mr John Muir of Deanston deponed—"I do not regard Mr Steel as anything but a Scotchman. He was proud of being a Scotchman, and talked in that strain. . . . As a young man, of course, he had comparatively small means, but I knew from our conversations that ultimately he hoped to buy a property in Scotland. He continued to express that intention both before and after his marriage. He asked me to keep a lookout for properties which I thought might suit him."

Mr James M'Gregor, shipowner in London and Glasgow, also deponed—"I always understood that when he (Mr Steel) retired partially from business he would reside in Scotland. He frequently spoke of buying an estate in Scotland."

"On 26th June 1888 the Lord Ordinary (FRASER) found that the domicile of the pursuer was in Scotland, repelled the first plea-in-law for the defender, and sustained the jurisdiction of the Court; and on the merits allowed the parties a proof of their averments.

"*Opinion.*—I do not think it necessary in this case to call for a reply from the counsel for the pursuer, as I am satisfied upon the proof which has been led that the domicile of the pursuer is in Scotland, and was so at the time he raised this action. We start with the fact that the domicile of origin was in Scotland. The bearing of this fact on the question now to be answered is very important. Lord Chancellor Cottenham, in the case of *Munro* v. *Munro*, August 10, 1840, 1 Rob. App. 606, expressed his opinion as follows—'Questions of domicile are frequently attended with great difficulty, and as the circumstances which give rise to such questions are necessarily very various, it is of the utmost importance not to depart from any principles which have been established relative to such questions, particularly if such principles be adopted not only by the laws of England, but generally by the laws of other countries. It is, I conceive, one of those principles, that the domicile of origin must prevail until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicile and acquiring another as his sole domicile. Such, after the fullest consideration of the authorities, was the principle laid down by Lord Alvanley in *Sommerville* v. *Sommerville*, 5 Ves. 787, and from which I see no reason for dissenting. So firmly, indeed, did the civil law consider the domicile of origin to adhere, that it holds that if it be actually abandoned, and a new domicile acquired, but that again abandoned, and no new one acquired in its place, the domicile of origin revives. To effect this abandonment of the domicile of origin and substitute another in its place, it required "le concours de la volonté et du fait,"—*animo et facto*—that is, by actual residence in the place, with the intention that the place then chosen should be the principal and permanent residence, *larum rerumque ac fortunarum suarum.* There must be residence and intention; residence alone has no effect *per se*, although it may be most important as a ground from which to infer intention. Mr Burge in his excellent work (1 Burge, For. and Col. Law, 54) cites many authorities from the civilians to establish this proposition. "It is not," he says, "by purchasing and occupying a house, or furnishing it, or investing a part of his capital there, nor by residence alone, but it must be residence with the intention that it should be permanent."'

"In like manner Lord Cairns thus expressed himself on the point—'The *onus* lies upon those who desire to show that there was a change in this domicile, by which I mean the personal *status* indicated by that word—the *onus*, I say, lies upon those who assert that the personal *status* thus acquired, and continued from the time of his birth, was changed, to prove that that change took place. The law is beyond all doubt clear, with regard to the domicile of birth, that the personal *status* indicated by that term clings and adheres to the subject of it until an actual change is made by which the personal *status* of another domicile is acquired'—*Bell* v. *Kennedy*, L.R., 1 Sc. App. 310, 6 Macph. (H. of L.) 69. The *onus* therefore is upon the defender in this action to show that the domicile of origin was changed, and in regard to change of domicile it must be kept in mind, as the authorities I have quoted show, that it is not effected by the mere fact of residence, however long continued, without the *animus* or purpose of permanent domiciliation and adoption of the laws of the new domicile. Much more where the question is, whether a man has changed his domicile, abandoning that which he held from his birth, must there be proof not only of the fact of residence elsewhere for a time, but of an

intention to constitute a new domicile in exclusion of the old.

"Now, I can find no proof that the pursuer of this action, while he was attempting to establish a business in Rangoon, had any intention whatever of becoming a domiciled Burmese. He travelled during the years before his marriage between Rangoon and London and Scotland, all in the way of business. His whole plan of life as regards his domicile was unsettled, and until the marriage in 1881 I am of opinion that there is no ground for saying that he had changed his domicile of origin.

"Did he then do it in 1881? He lived with his wife most unhappily—according to the account of both parties—from 1881 to 1884 in London and at Brighton. His business was in London and at Rangoon. He required to attend to his business at London, but this was not enough to effect a change of domicile according to Lord Cottenham, and I refrain from expressing any opinion as to whether or not a domicile different from that of origin was adopted when the pursuer and his wife took up house at Lancaster Gate, London, in 1881. I will assume, for the purpose of this case, that such a domicile was acquired; and then comes the question, whether the domicile of origin was revived by what took place at Whitsunday 1887. Upon this point I have no doubt whatever. It is clearly proved by the evidence of the pursuer's friends—acquainted with him from childhood—that he had always looked forward to settling in his own country of Scotland when he had made a fortune. It was the theme of constant talk among them, and it is proved beyond all controversy that he had been, long before the unhappy separation between him and his wife, looking out for an estate in Scotland. He was unable to get himself suited in regard to the purchase of such an estate, but at Whitsunday 1887 he obtained a lease for a term of years of Braco Castle in Perthshire, to which he transferred the whole of his household, and such of his furniture as he did not give to his brother James. He depones that he did this with the view of permanently settling in Scotland and making it his home, and I entirely believe this statement, and this is quite sufficient to constitute him a domiciled Scotsman. In regard to the revival of the domicile of origin, the case of *Udny* v. *Udny*, June 3, 1869, 7 Macph. (H. of L.) 89, shows that this takes place upon the mere abandonment of a domicile of choice, without the acquisition of another domicile of choice. And Lord Stowell says, in regard to this matter, that 'it is always to be remembered that the native character easily reverts, and that it requires fewer circumstances to constitute domicile in the case of a native subject than to impress the national character on one who is originally of another country.'—'*The Harmony*,' 2 Rob. Ad. 322.

"But there has been mixed up with this question as to domicile another question with which it has no connection. It is said, in the first place, that the pursuer in coming to Scotland did so with the purpose of acquiring a domicile in order to give the Scottish Courts jurisdiction in an action of divorce by him against his wife. Secondly, it is said that his object in coming to Scotland was to obtain the advantage or benefit of the Scotch law, which enables a deserted spouse to obtain divorce after four years, which four years' desertion, it is said, must take place in Scotland, and not in a foreign country. These two points were settled—so far as they can be in an undefended action—in the case of *Carswell* v. *Carswell*, July 6, 1881, 8 R. 901. But as it is stated by the defender that she means to contest the soundness of that judgment, I may here explain in a few words the grounds on which I entirely concur in it.

"I have often had occasion to consider these two questions. First, the motive of the pursuer in coming to Scotland is in my opinion totally irrelevant. The husband is the master of the situation. He can determine the domicile of the spouses, and according to that domicile the rights of the spouses must be settled. He can, for example, change the domicile from Scotland to England, and, if he does so, the wife is without *jus relictæ* at his death. He is entitled in like manner to change the domicile to a country whose laws give him privileges and advantages that he does not enjoy under the law of the country where the spouses may be at the time resident. He exercises only a legal right when he comes to Scotland and there appeals to the law of that country for redress against a conjugal wrong. When he comes to Scotland he is subjected to all the restraints imposed by the laws of this country upon individuals, and in like manner he is entitled to all its privileges, among which one of these is the right of divorce against a deserting wife.

"Then, on the other hand, the plea that the desertion must have taken place in Scotland has always appeared to me to be one of the most untenable that could be stated against the operation of a most beneficial law. The conjugal wrong which the Statute of 1573 was intended to repress was not a wrong committed merely in Scotland but anywhere. It is the law of all countries, and it is the obligation undertaken by the matrimonial vow at marriage that the wife shall adhere to the husband, and whether the non-adherence be committed in America, or Africa, or elsewhere out of Scotland, yet if it is committed, a Scotsman domiciled in Scotland is entitled to found upon this violation of the matrimonial vows as a ground for divorce in like manner as he would be entitled to found upon an adultery committed at the Cape of Good Hope or Rangoon by the wife.

"The defender may put an end to this action at any time she pleases. She has only to do what she promised at her marriage and what the law requires of her. The pursuer stated when examined as a witness that he is willing to receive her, and that he is anxious that she should return to cohabitation. Apparently she is still under the same malign influence that caused the estrangement originally, and will not fulfil the duty which the law declares to be incumbent upon her of adhering to her husband. The husband cannot obtain from any court of law in Scotland an order directing her to resume cohabitation to be followed up by arrest as was formerly the custom in England if the order was disobeyed. The obligation of adherence is punished not by enforcing it but by dissolving it. There are, however, certain inconveniences which the defender ought to contemplate before continuing to persist in her present resolution.

A wife who deserts her husband is in general not entitled to the custody of the children of the marriage, and she has the custody of one of them at present; and she can claim no separate maintenance from her husband, and the legal rights in the husband's property which the law confers upon a widow will be denied her; and although she is defender in an action of divorce, yet looking to the peculiar character of this action, and the offer made by the husband to receive her back to his society, the right which the wife has of conducting her defence at the husband's expense may not be held here to exist. All these matters should be kept in mind by this defender."

The defender reclaimed, and at the discussion in the Inner House the following pleas were added for her—"(3) In the circumstances condescended on the pursuer lost his domicile of origin, and the said domicile has never revived. (4) Even assuming the pursuer's domicile to be now in Scotland, it has not, at least in the circumstances of this case, the effect of giving jurisdiction for divorce on grounds not admitted by English law. (5) The alleged desertion not having continued for four years after such revival, the same is not sufficient to warrant decree under the statute."

Argued for the defender—The pursuer when he left Scotland in 1857 for Burmah lost his Scottish domicile and acquired (1) an Anglo-Indian domicile, and (2) thereafter, on his return to London in 1874, an English domicile, at and after which date, both for business and domestic purposes, London became his home. When a person leaves his own country, and establishes himself in business in another country, he acquires a domicile there, even though his intention may be at some future time, if he prospers in business, to return to the country of his birth. That was the case of the pursuer here. His domicile till 1887 was English, when he took Braco Castle, and again began to acquire a Scottish domicile. [Lord President—Acquiring a domicile must be *animo et facto*, but retention is *animo*, especially if the domicile be that of origin.] —Westlake's Private International Law, p. 277, and cases there cited; *Aikman* v. *Aikman*, March 17, 1859, 21 D. 757, *aff.* 3 Macq. 854, and *dictum* of L. Chanc. Campbell, p. 858. On the question of intention to be gathered from actions *cf. Doucet* v. *Geoghegan*, 1877, L.R., 9 Ch. Div. 441; *Bruce* v. *Bruce*, 3 Paton's App. 163, Lord Thurlow's opinion. In point of fact, after 1873 the pursuer had no connection with Scotland except the connection of birth. His father died in England (on a visit) in 1872; his mother went to reside there to live with her sons; his business was in Rangoon and London; he had no partners except in London; and his Scotch business was handed over to Finlay & Company. His marriage was in England; his only residence was in Lancaster Gate. His marriage settlement was English in form, and was not, as was commonly done, executed according to both English and Scottish law. There was nothing to suggest to the defender that her husband was not a domiciled Englishman—*Harvey* v. *Farnie*, 1882, L.R., 8 App. Cas. 43. Further, the pursuer made his child a ward in Chancery, and so did his best to prevent it being connected with Scotland. As to the pursuer's actings with reference to taking Braco, the question was whether his coming back to Scotland was in *bona fide?* He alleged that it was in furtherance of a long expressed intention, and upon that matter he could not be contradicted. It was not suggested that there was anything here of the nature of collusion, but his lease of Braco really came to nothing, as it might be terminated any year, when the pursuer's English domicile would revive. Supposing the pursuer only began to re-acquire a Scottish domicile in 1887, did that subject the defender to the jurisdiction of the Scottish Courts, *i.e.*, could the husband by changing his domicile alter the rights of his wife?—*Pitt* v. *Pitt*, December 5, 1862, 1 Macph. 106, and 4 Macq. 627. The defender submitted that it required four years' desertion by one spouse domiciled in Scotland from the other spouse also domiciled in Scotland —*Shields* v. *Shields*, December 1, 1852, 15 D. 142; *Jack* v. *Jack*, February 7, 1862, 24 D. 467; *Carswell* v. *Carswell*, July 6, 1881, 8 R. 901. The wife was not always bound to appear before the *forum* of her husband's domicile—*Lovey* v. *Lindsay*, 1 Dow, pp. 137, 138, and 140. The pursuer had changed his domicile without any warning, and a month after coming to Scotland had brought the present action against his wife. Thus the defender had only one month and not four years to reflect and make up her mind. As there was no penalty for non-adherence in England, the present action was irrelevant, and proof should not have been allowed—*Stavert* v. *Stavert*, February 3, 1882, 9 R. 519, Lord President, p. 527; *Niboyet* v. *Niboyet*, November 1878, L.R., 4 Prob. & Div. 1; *Goodman* v. *London and North-Western Railway Company*, March 6, 1877, 14 S.L.R. 449; Fraser on Husband and Wife, ii. pp. 1560 and 1573.

Argued for the respondent—The circumstances of the case when taken as a whole showed that the pursuer was, and all along continued, a domiciled Scotsman. The two dates of importance in the case were 1857 and 1873. As regarded 1857, when the pursuer went to Burmah, it was important to recollect that he was a domiciled Scotsman, and it was on the defender to prove that this domicile was changed *animo et facto*. The mere fact of change of residence was not sufficient, there must be clear proof of an abandonment of the original domicile—*Capdevielle*, 1864, 2 Hurl. & Colt. 985, and 1010; *Moorhouse* v. *Lord*, 1863, 32 L.J., Ch. 295; *Udny* v. *Udny*, December 14, 1866, 5 Macph. 164, and 7 Macph. (H. of L.) 89, Lord Westbury's opinion. There must be not merely abandonment of the old domicile, but an intention to remain in the new domicile—*Donaldson* v. *Maclure*, December 18, 1857, 20 D. 321. In *Jopp* v. *Wood*, 1865, 34 L.J., Ch. 212, the person was absent twenty-five years with only one break, while here the pursuer was three times home in fifteen years, and was inquiring about the purchase of a permanent home in Scotland. From 1873 to 1880 the pursuer's life was unsettled; his time was spent partly in Burmah and partly in London. During this time he continued his inquiries about a Scottish estate. But if the pursuer had at any time between 1857 and 1887 lost his Scottish domicile, it revived in 1887, when he took a lease of Braco with the intention of finally residing in Scotland. As to the effect of the pursuer's coming to Scot-

land, in a question of jurisdiction it had been held that the motive for changing the domicile could not be looked at in judging of its effect—*Stavert* v. *Stavert*, February 3, 1882, 9 R. 519—but in the present case the evidence showed that the change had not been made for the purposes of the present action; even if it had, however, the pursuer was a domiciled Scotsman, and was entitled to bring this action. The general rule should prevail, that for all questions of jurisdiction the domicile of the husband is the domicile of the wife. The circumstances in the case of *Pitt*, relied on by the other side, were so different as to render it of no value in the present case. It had been urged that the marriage-contract of the spouses was entirely an English deed, but three of the trustees were well-known Scotsmen. The object of the pursuer in making his child a ward of Chancery was solely to prevent his wife taking this step, and in order to retain the custody of the child—"*The Halley*," 2 Privy Council App. 193; *Phillips* v. *Eyre*, L.R., 4 Q.B. 225; Smith's Leading Cases, i. 667; Bishop on Marriage and Divorce, ii. 142 and 172; *Horn* v. *North British Railway Company*, July 13, 1878, 5 R. 1055; *M'Larty* v. *Steel*, January 22, 1881, 8 R. 435.

At advising—

LORD PRESIDENT—The pursuer Mr Steel brings this action of divorce against his wife upon the ground of desertion, and he is met with the plea of no jurisdiction, which is founded upon the allegation in point of fact that he is not a domiciled Scotchman. The Lord Ordinary has repelled the plea, and sustained the jurisdiction of the Court upon a finding that the domicile of the pursuer is in Scotland. But the defender, since the case came before us, has added other pleas which might have raised in certain circumstances important questions of law. She has maintained, among other things, "that in the circumstances condescended on the pursuer lost his domicile of origin, and the said domicile has never revived;" and another plea is, "even assuming the pursuer's domicile to be now in Scotland, it has not, at least in the circumstances of this case, the effect of giving jurisdiction for divorce on grounds not admitted by English law." And further, she maintains that "the alleged desertion not having continued for four years after such revival"—that is, of the domicile—"the same is not sufficient to warrant decree under the statute"—meaning the Statute 1573.

Now, according to the view which I take of this case it is not necessary to consider or determine the questions raised by these additional pleas, because I am of opinion that Mr Steel is not only a domiciled Scotchman, but that he never was anything else—he never lost his domicile of origin, and I think the arguments for the defender have really proceeded very much upon a misapprehension, or at least a misstatement of the true nature and effect of a domicile of origin. It is by no means an easy thing to establish that a man has lost his domicile of origin, for, as Lord Cranworth said in the case of *Moorhouse* v. *Lord*—"In order to acquire a new domicile a man must intend *quatenus in illo exuere patriam*," and I venture to translate these words into English as meaning that he must have a fixed intention or determination to strip himself of his nationality, or in other words, to renounce his birthright in the place of his original domicile. The serious character of such a change is very well expounded by Lord Curriehill in the case of *Donaldson* v. *M'Clure*. He says—"To abandon one domicile for another means something far more than a mere change of residence. It imports an intention not only to relinquish those peculiar rights, privileges, and immunities which the law and constitution of the domicile confer on the denizens of the country in their domestic relations, in their business transactions, in their political and municipal *status*, and in the daily affairs of common life, but also the laws by which the succession to property is regulated after death. The abandonment or change of a domicile is therefore a proceeding of a very serious nature, and an intention to make such an abandonment requires to be proved by satisfactory evidence." Perhaps that last sentence might have been more strongly expressed, because there must be not only an intention to change, but that intention must be carried into execution. For, as Lord Cottenham said in *Munro* v. *Munro*—"The domicile of origin must prevail until he has manifested and carried into execution an intention of abandoning his former domicile and acquiring another as his sole domicile." There is one other point very well settled in the law of domicile, and which is expressed very distinctly and clearly by Lord Wensleydale in the case of *Aikman* v. *Aikman*, where he says—"Every man's domicile of origin must be presumed to continue until he has acquired another sole domicile by actual residence, with the intention of abandoning the domicile of origin. The change must be *animo et facto*, and the burden of proof unquestionably lies upon the party who asserts that change." And the same doctrine as regards the *onus* of proof is laid down by Lord-Chancellor Cairns in *Kennedy* v. *Bell*. These are very well fixed principles now in the law of domicile, and I say no more about them; but their application here, I think, is obvious and very important.

The defender undertakes by this plea of no jurisdiction to establish as matter of fact that her husband has lost his domicile of origin. Now, how has she acquitted herself of that undertaking? The proof upon the defender's part consists of her own statement upon oath, and really nothing more. There are one or two other witnesses called who contribute nothing to the case at all; and her own statement is of the vaguest and most untrustworthy kind. She states as a sort of general impression that during her married life, or one may say after her first acquaintance with her husband, she had no particular reason to suppose that he was a domiciled Scotchman. She met him in London, and married him there. But when she is asked very special questions as to sentiments that he expressed, and plans that he proposed to her regarding their married life, and regarding a return to Scotland, she falls back entirely on *non memini*, and there is nothing to be had from her at all upon that subject.

On the other hand, let us see how the case stands. The first time that the pursuer went from home he went to Java, and the next time he went from home he went to Rangoon—to Burmah—and it was seriously maintained that this born Scotchman determined to make himself a domiciled Burmese. It is very difficult to realise

what that means; but that any domiciled Scotchman in his senses should come to a determination to live the rest of his life in Burmah is an idea that I cannot bring myself to entertain at all. Nobody goes to Burmah to remain. Nobody in his senses ever goes to Burmah *sine animo revertendi*, and it is really idle to discuss that part of the case. There is no basis or foundation for it at all. He went there in prosecution of his business as a trader. He went there to make his fortune as far as he could, and he continued there for a long time in pursuit of fortune, and at last succeeded. But the idea of its ever entering into his mind that when he had realised his fortune, and made as much in Burmah as he could, he was going to spend the rest of his life there is entirely out of the question. Something was said about an Anglo-Indian domicile. Now, the notion of an Anglo-Indian domicile has no application in this kind of case at all. Why an Anglo-Indian domicile should be suggested for a Scotchman I do not know. I think, with Lord Cranworth, that it would be a Scoto-Indian domicile. But let that pass. An Anglo-Indian domicile or a Scoto-Indian domicile applies only to persons who go out to India in the service of the East India Company as it was formerly, or in the service of the Indian Government as the matter stands now, and it is because the nature of the employment which these parties have accepted makes it their duty to reside permanently in India. But that does not apply in the slightest degree to a trader. He does not go to Burmah because his duty requires him to reside there. He goes to Burmah for the sake of trading, just as he went to Java before, and as he would go to many other places probably in the course of his life. He goes there not as a resident, not as a citizen of the country, but as a foreign trader. So that the idea of a domicile acquired in that way must be at once dismissed.

But then, no doubt it is alleged, and there is at first sight more specious ground for that contention, that after he came home from Burmah he settled in London, and thus became a domiciled Englishman. Now, the reason of his going to live in London is very well explained by himself. When he went to live in London he certainly did not cease to be a trader, or give up his trade with Burmah. On the contrary, it was in prosecution of that very trade that he was led to live in London. He says—"At 31st October 1870 I retired from Gladstone, Wyllie, & Company, and established my own firm of William Strang Steel & Company. James Finlay & Company were at the beginning, and for some years, the only representatives we had in this country, and it was in conjunction with them that our business in Rangoon was opened." Now, James Finlay & Company were a Glasgow house. "That arrangement continued till the middle of 1873, when I found it necessary to make an alteration upon it. Our rice business had largely developed, and we had erected large rice mills; and while James Finlay & Company were excellent people for the soft goods department of our business, we required to have an establishment in London to get orders for rice, charter ships, and do matters which James Finlay & Company could not do so well as I could do myself. London is the centre of the rice market. I established a branch of my business in London." Now, it appears very clearly there that his transactions at home during his trading with Burmah while in the house of Gladstone, Wyllie, & Company were all through a Glasgow house, and not through any English connection at all; and the only reason why he gave up his own friends in Glasgow as his proper agents and correspondents in this country was the reason which he has explained here, that London was the place for a rice business, and that James Finlay & Company could not possibly carry on that for him. And therefore it was that he established a branch of his business in London. He had one branch in Rangoon and another branch in London, and I do not think that the establishment of a branch of his business in London affected his position as a domiciled Scotchman any more than the establishment of a branch in Burmah. He goes to live there in consequence of his having this branch in London, but it is quite plain throughout the whole of his evidence that he looks forward from the very beginning of this London connection to a time when he will be enabled to retire from the active superintendence of that business. He takes two of his brothers into partnership and some other young men, and as they go on gathering experience, and acquiring a larger and larger interest in the house, they take more of the management of the business upon them, until at length they are so completely initiated into the whole details of the business and so able to carry it on by themselves, that Mr Steel comes to the resolution to give up the active superintendence of the business altogether. That is not a new idea. It is an idea that has been present to his mind throughout his whole life after he established this branch in London, and he is looking forward to it anxiously so as to enable him, as he himself explains, to return to Scotland and buy land there or settle there. The necessity for his being in London came to an end, as he himself expresses it in his evidence. After mentioning that he had pointed out a place to his wife where he thought he might be comfortably settled in Scotland, and shown her on a map where it was, he goes on to say:—"I asked her for an opinion, and she said she would give no opinion; she took no interest in me or my estates, or anything else belonging to me. The matter then dropped. I never considered that I had ceased to be a Scotchman. I was rather proud of being a Scotchman. Nearly all the visitors to my house were Scotch. Scotchmen were continually in and about my house, and Scotland was continually being talked of. I had no intention of settling permanently in England, not longer than my business required me to reside there. I had all along the prospects of getting my business into such a position that I would not require to supervise it. I had always the intention of ultimately settling in Scotland as soon as business arrangements permitted. That was my intention both before and after my marriage. Naturally it would only be to my very intimate friends that I would mention that, but it was spoken of in the family circle and amongst my intimate friends. After my wife left me, the matter of settlement in Scotland came up more prominently."

Now, it was about the beginning of the year 1887 that he at last found himself in a position to leave London altogether, and entrust the management of the branch of the business

there to the younger partners. And accordingly he came down and set up his establishment at Braco Castle. But in the meantime, and before that had been done, he had been looking for an estate to buy in Scotland. There were several places brought under his notice, and he took a great deal of interest in the matter, and made a great many inquiries respecting them. And besides all that there was one other *angulus terrae* for which he had a great affection, and that was the small remainder of the family estate of his mother which he was determined to buy from the beginning. He had it in view all his life. Now really, in these circumstances, if we can believe the statements of this gentleman—and I must say his evidence seems to be given with great frankness and candour, and seems to have impressed the Lord Ordinary in the same way—I think if we can believe his statement, there never was a clearer case of retention of the domicile of origin. I have said already that there is no discharge of the *onus* lying upon the defender, for she has proved absolutely nothing, and all the statements of the pursuer are consistent with the view that he never for a moment intended to abandon his domicile of origin. It is a small circumstance, but still it might have been made something of if his wife had been at the date of the marriage a domiciled Englishwoman, but she was nothing of the kind. She was born at Demerara, and she was of Irish extraction, so that there was not even that slight link.

On the whole matter, therefore, I have come to the conclusion that this gentleman is giving a fair and true account of the adventures of his life, and I must add that there is some very material corroboration by other witnesses of the statements that he makes. On the whole matter I must say that I do not think I ever saw a clearer case of a continuing domicile of origin during the whole period of the man's life.

Lord Mure—I concur in the result that your Lordship has arrived at. In the course of your opinion your Lordship has referred to the judgment of Lord Cottenham in the case of *Munro*, and it has always appeared to me that in that case we have perhaps the most clear and distinct exposition of the law of Scotland that we have upon this question of domicile. In 1 Robertson, 606, I find the passage your Lordship has referred to, and after the words which your Lordship quoted, he goes on to say that he conceived "that the domicile of origin must prevail until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicile and acquiring another as his sole domicile. Such, after the fullest consideration of the authorities, was the principle laid down by Lord Alvanley in *Sommerville* v. *Sommerville*, and from which I see no reason for dissenting. So firmly indeed did the civil law consider the domicile of origin to adhere that it holds that if it be actually abandoned, and a new domicile acquired, but that again abandoned and no new one acquired in its place, the domicile of origin revives. To effect this abandonment of the domicile of origin, and substitute another in its place, it required 'le concours de la volonté et du fait,'—*animo et facto*—that is, by actual residence in the place, with the intention that the place then chosen should be the principal and permanent residence, *larum rerumque ac fortunarum suarum*. There must be residence and intention. Residence alone has no effect *per se*, although it may be most important as a ground from which to infer intention. Mr Burge, in his excellent work, cites many authorities from the civilians to establish this proposition. 'It is not,' he says, 'by purchasing and occupying a house or furnishing it, or investing a part of his capital there, nor by residence alone, but it must be residence with the intention that it should be permanent.'"

Now that being, as I apprehend, the law in questions of this description, when I turn to the evidence I am quite unable to come to any other conclusion than that which your Lordship has expressed. Mr Steel goes out to Burmah, and he is there even to this day, but he never, so far as I see, selected Burmah as a permanent residence, and it would be rather absurd to suppose that he did. But after the period when he first became connected with Gladstone, Wyllie, & Company's house he returns to Scotland several times from Burmah before he establishes the branch house in London, and on these occasions he goes and resides with his relatives in Glasgow. He does that in 1864, and he goes out again to Burmah in 1865, and he returns to Glasgow in 1868. He remains there for a certain time, and goes out again in 1869 to Burmah. Then, after the establishment of the branch house in London, he still goes out to Burmah occasionally on business, but he returns to London, and lives with his relatives there. Up to 1874, which is about twenty years after he establishes his business in Burmah, he goes backwards and forwards between that place and London, and never suggests any intention of permanently residing there. As regards the residence in London, he at first, after establishing the business, as he explains, resided sometimes with one relation and sometimes with another. He takes the lease of a house, and about the period of his marriage he buys a house there. I agree with your Lordship that he seems to have given his evidence with great candour, and I think his evidence distinctly shows that during the whole period of time that he was engaged in business, what he ultimately looked to was settling in Scotland, and it is in evidence not only that he himself looked about for estates in Scotland some years before 1887, after he had put his firm in London in such a position as would enable him to settle there, but he is confirmed in that by his brother Mr James Steel, and also by Mr John Muir, a partner of Finlay & Company, and by Mr M'Gregor, all of whom speak to what they heard him say, and Mr M'Gregor in particular says—"I always understood that when he retired partially from business he would reside in Scotland." In these circumstances I find that there is not only no evidence of intention to give up his domicile of origin, but that there is distinct evidence by the pursuer himself and his brother and his friends that he intended, when he had the means of doing so, to settle in Scotland. I therefore agree with your Lordship in thinking that the Lord Ordinary has taken a right view of this case.

Lord Shand—In the very numerous cases that have occurred over a period of many years regarding

questions of domicile, I think the principles upon which a question of this kind must be settled have been frequently and very clearly stated, and I do not mean to say anything upon that subject except this, that it is clear that the domicile of origin must be proved to have been abandoned in the first place, and another domicile chosen by the person whose domicile is in question. And the question here for consideration is, has it been proved by the defender that there ever was an abandonment of the Scottish domicile, and a choice of a domicile in England as the sole domicile of Mr Steel?

I am of opinion with your Lordship that there is an entire failure to prove the intention either to abandon the Scotch domicile or to adopt a new one. So far as regards the residence in Rangoon I entirely agree with all that your Lordships have said. There is every probability against a man selecting Rangoon for the purpose not merely of prosecuting his business, but of adopting it as his home, in which he means to live and die. I should say it would be almost impossible to point to anyone who had ever done so. At least if such a man could be found it might be certainly predicated of him that he was singular in his tastes and very eccentric. Looking to the evidence I think it is perfectly clear that Mr Steel's residence at Rangoon was temporary, and for a temporary purpose; and I do not think that the argument which was submitted with reference to the acquisition of a domicile there is worthy of serious consideration.

The only question in the case is whether something stronger cannot be said for a domicile in England in consequence of his residence in London, and there I think there was room for argument, although I think the argument clearly fails. There is of course more probability in favour of a man choosing London or England as his permanent home, in the view that he is never again to return to Scotland, so that he abandons his home in Scotland; and the question is, whether upon the evidence here we have proof that that was the state of facts as regards Mr Steel? He lived there a considerable time. He took the lease of a house, No. 88 Lancaster Gate, for twenty-one years, with breaks at the end of seven or fourteen years. He was married in London, and no doubt appeared to have settled there. But along with these facts we must take the body of evidence which we have in regard to the state of his mind during all this time. As your Lordship has pointed out, the purpose of his going to London is obvious, viz., the prosecution of his business—the connection with Rangoon being still kept up. We have, however, in regard to intention, the clearest possible evidence from Mr Steel himself. That evidence seems to me to put the case beyond any question. As I said in the course of the discussion, if this question of domicile had arisen upon a question of succession, Mr Steel having died while still living in London, the Court might have been deprived of a good deal of light which is in the evidence Mr Steel has himself given, and might have been driven to decide this question of jurisdiction upon imperfect evidence, the proof of *animus* being only supplied from conversations that he had had with his friends, and the intention he had then expressed. Even then I should have said that upon the proof, as we have it, there is evidence through his friends that all the time during which Mr Steel was in London he was living there steadily as a Scotchman who held to Scotland as his home, and was looking forward to the time when he should return to it.

But I think that matter is put beyond all question by the very clear evidence which Mr Steel has given, and which there is no reason whatever to doubt. He tells us himself that he had all along hoped to return to Scotland—meant to return to Scotland I should rather say—and that he still regarded himself as a Scotchman, and that it was a mere question of time and convenience when he should return. We have also his evidence corroborated in all that he has said by his two friends who were examined, and who knew him intimately, by the fact proved in evidence that again and again he was making inquiries about Scotch estates, and finally by the fact that he has returned to Scotland to live here, and is now resident at Braco. I notice that questions were put to Mr Steel as to whether this return to Scotland was not with a purpose, the suggestion being that he had acquired a domicile in England in the meantime, and that he desired to get rid of that domicile, and to acquire a Scotch domicile, or to appear to re-acquire a Scotch domicile without seriously meaning to do so. On that matter I think Mr Steel was quite frank, as he was in all the rest of his evidence. He says that he had all along meant to return to Scotland, and that what he was waiting for was a time when he might be able to make such arrangements as would not require his close personal constant attention at business in London. He says quite frankly that his return to Scotland at the time he did was indeed accelerated by the idea that it would be better that this question should be raised when he was residing in Scotland. He puts it, I think, very reasonably when he says—"I had always intended to go and reside in Scotland, and the prospect of these proceedings may have accelerated the carrying out of that intention"; and in an earlier passage he says that he never thought that change of residence was important. "No doubt," he says, "it was in my mind by way of stopping any suggestion about my not being a Scotchman on account of my residence away from Scotland." It does not appear to me that the circumstance of his intention to raise such an action as the present having accelerated his return to Scotland—his return to Scotland having been in his mind all along, and he always having regarded Scotland as his home—is of any moment. His having come to Braco, thinking it might be of advantage to him with reference to these proceedings, while carrying out the intention that he had all along entertained, does not appear to me to have any serious bearing on the question now before us. On the whole matter it appears to me that Mr Steel never abandoned his Scottish domicile, and so never acquired any other.

Lord Adam, who was absent on circuit when the case was heard, delivered no opinion.

The Court recalled the interlocutor of the Lord Ordinary, found that the pursuer's domicile of origin was in Scotland, that he had never changed that domicile or acquired another; repelled the 1st, 3d, 4th, and 5th pleas for the

defender, and remitted to the Lord Ordinary to allow the parties a proof of their averments, and to proceed further in the case.

Counsel for the Pursuer—D.-F. Mackintosh—C. S. Dickson—Sir L. Grant. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Defender—Sir C. Pearson—Graham Murray. Agents—John Clerk Brodie & Sons, W.S.

Wednesday, July 18.

SECOND DIVISION.

[Lord Fraser, Ordinary.

EDINBURGH ECCLESIASTICAL COMMISSIONERS *v.* KIRK-SESSION OF THE HIGH KIRK OF THE CITY OF EDINBURGH.

Church — Ecclesiastical Commissioners — Kirk-Session of St Giles—Seat Rents—Annuity-Tax (Edinburgh and Montrose) Act, 1860 (23 *and* 24 *Vict. c.* 50), *secs.* 5 *and* 6—42 *and* 43 *Vict. c.* 221.

By the Act 23 and 24 Vict. c. 50, section 5, the whole rights of administration and custody of the parish churches in the city of Edinburgh, which previously belonged to the Magistrates and Council of Edinburgh, were vested in the Ecclesiastical Commissioners created and constituted by that Act. Section 6 provided that the pews or seats in these churches should be let by or at the sight of the kirk-session of each church, subject to any directions which the Commissioners might issue, and that the kirk-session should keep an account of the whole moneys received by them for the pew or seat rents, and of the sums retained by them for payment of expenses, and should lay them before the Commissioners, and should pay over the proceeds to the Commissioners, to be applied by them according to the statute. At the date of the Act, St Giles, which came within the provisions of the 5th section, consisted of three churches under one roof, which were divided from each other by partition walls. In 1879 the Act 42 and 43 Vict. c. 221, was passed to carry out a scheme for the restoration of St Giles'. The preamble of this Act sets forth that "whereas at the passing of the Act 23 and 24 Vict. c. 50, the ancient Church of St Giles' was divided for congregational purposes, by walls which formed no part of the original structure, into three churches, viz.—(1) the choir or High Kirk, (2) the southern transept or Old Kirk, and (3) the nave or New North Church (usually called West St Giles' Church) . . . . and whereas the part of the building formerly known as the Old Kirk has now been added to and incorporated with the High Kirk, the division walls between them having been removed; and whereas it is now proposed that a complete restoration of the said church should be effected, ... and for this purpose it is necessary that the West St Giles' Church should cease to be occupied as a separate place of worship, the division wall between it and the other parts being removed, and provision being made for the erection of a suitable church for the congregation presently worshipping there." Then follows section 1, which provides—"Whenever there shall be paid over to the Ecclesiastical Commissioners the sum of £10,500, the congregation at present worshipping in the New West St Giles' Church shall vacate the same, which shall thereupon be incorporated with and form part of the High Church . . . . 2. The Commissioners shall apply £10,000 in the purchase of a site for a church in lieu of it, and shall invest £500 and apply the interest *pro tanto* in the maintenance of the fabric of that part of the building presently occupied by the said West St Giles' Church." The money was obtained, and a new church built. The division walls between the three churches were accordingly removed, the area of the Old Church being provided, under the scheme of restoration, with pews or seats with consent of the Commissioners, while the area of West St Giles' Church was provided with chairs by the kirk-session, who received payments from persons using them.

In an action at the instance of the Ecclesiastical Commissioners against the kirk-session of St Giles', the summons concluded that the defenders should be ordained to account to the pursuers for the whole moneys levied and received by them as rents for seats or pews "in the High Kirk, including therein the area of the church formerly known as the Old Church and the area of the church formerly known as West St Giles', now incorporated with the said High Kirk and forming part thereof." The Court granted decree in terms of this conclusion of the summons, being of opinion (1) that the whole area of St Giles' must be held to be incorporated with the High Kirk under the Act 42 and 43 Vict. c. 221; and (2) (*diss.* Lord Rutherfurd Clark) that under the 5th and 6th sections of the Act 23 and 24 Vict. c. 50, the pursuers were entitled both to the rents for seats or pews in the area of the Old Church, and to the sums received for the use of the chairs in the area of West St Giles'.

Lord Rutherfurd Clark was of opinion that the chairs in the area which was formerly West St Giles' were not seats or pews within the meaning of the 6th section of the Act of 1860, and that the pursuers were therefore not entitled to receive the payments made for them.

In this case the pursuers were the Edinburgh Ecclesiastical Commissioners constituted by the Act 23 and 24 Vict. cap. 50, and the defenders were the Moderator, members, and Clerk of the Kirk-Session of the High Kirk of the City of Edinburgh. The conclusions of the summons were to have it declared that the defenders were bound in terms of the Statutes 23 and 24 Vict. c. 50, 33 and 34 Vict. c. 87, and 42 and 43 Vict. c. 221, to pay over to the pursuers "the whole moneys levied and received by them,